

NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

SCOTT C. MAGRUDER; et al.,

Plaintiffs - Appellants,

v.

WILLIAM SLAUGHTER; et al.,

Defendants - Appellees.

No. 05-35595

D.C. No. CV-02-00103-LBE

MEMORANDUM *

Appeal from the United States District Court
for the District of Montana
Leif B. Erickson, Magistrate Judge, Presiding

Submitted November 13, 2007 **

Before: McKEOWN, TALLMAN and CLIFTON, Circuit Judges.

This is an appeal from the order of the United States District Court
dismissing appellants' complaint without prejudice for failure to exhaust
administrative remedies.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. Fed. R. App. P. 34(a)(2).

On November 29, 2005, this court denied appellants' motion to proceed in forma pauperis and ordered appellant, within 21 days, to pay the filing fees and simultaneously show cause why the judgment challenged in this appeal should not be summarily affirmed. Appellants paid the filing fees but failed to respond to the order to show cause; accordingly this appeal was dismissed on February 27, 2006 for failure to prosecute.

On October 15, 2007, appellant Christianson filed an "emergency motion to show cause or motion to reopen case." This filing is construed as a motion to reinstate the appeal, and, so construed, is granted.

A review of the record, the opening brief, and the response to the order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.